IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 78 of 2007

MEHRA RAM & ANR.
V/S
MANAK LAL

Mr. SURESH SHRIMALI, for the appellant / petitioner

Mr. NR CHOUDHARY, for the respondent

Date of Order : 24.9.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant, perused the impugned judgments.

Both the learned Courts below after appreciating the evidence, and comparatively considering the evidence led on the side of both the parties, have come to the conclusion that the wall in question is joint party wall, and the defendant could not raise the height. Obvious consequence would have been that the entire construction was required to be pulled down. However, in view of the relief claimed in the plaint itself, construction, to the extent of half of the width of the wall, has been ordered to be removed.

It is pointed out by learned counsel for the respondent that alongwith the suit, an application for temporary injunction was filed, wherein the appellant gave an undertaking to remove the construction in the event of

suit being decreed, he was allowed to raise construction, and therefore, now it is not open to him to invoke the equities, as are being attempted to be invoked by the appellant, by contending that the construction has already been raised, the plaintiff would not suffer any harm, the appellant is prepared to give up any claim for the costs incurred by him for raising construction, and he is prepared to allow the plaintiff to reasonably use the joint wall, etc.

In my view, the findings recorded by the learned Courts below do not require any interference, and on the face of the above undertaking, as is available on record, the equitable considerations can also not be invoked. The appeal thus, does not involve any substantial question of law. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

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